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6 Attorneys for DIANA DOLLAR KNOWLES

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8
9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN FRANCISCO DIVISION

FILED

13 06 JUN 20 PM 12:07

RICHARD W. WELKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

E-filing

12
13 DIANA DOLLAR KNOWLES,

14 Plaintiff,

15 v.

16 UNITED STATES OF AMERICA,

17 Defendant.
18
19

CASE NO.

3033

COMPLAINT FOR REFUND

JURY DEMANDED

- 20
21 1. The Plaintiff is Diana Dollar Knowles who resides in San Francisco, California.
22 2. The Defendant is the United States of America.
23 3. This is an action for the recovery of failure to file and failure to pay penalties
24 erroneously or illegally assessed against the Plaintiff pursuant to 26 U.S.C. § 6651(a)(1) & (2),
25 and wrongfully collected by the Defendant. This Court has original jurisdiction over this matter
26 pursuant to 26 U.S.C. § 7422 and 28 U.S.C. § 1346(a)(1).
27 4. Recovery is sought of the failure to file and failure to pay penalties assessed against
28 the Plaintiff pursuant to 26 U.S.C. § 6651(a)(1) & (2) and collected with respect to the Plaintiff's

1 United States Gift Tax Return (Form 709) for the taxable year ended December 31, 2004. The
2 Plaintiff received an automatic extension of time to October 15, 2005, in which to file the 2004
3 gift tax return. However, due to reasonable cause, the 2004 gift tax return was filed with the
4 Internal Revenue Service Center in Cincinnati, Ohio, on November 21, 2005. The full amounts of
5 the gift tax due of \$5,566,701.00, a self-assessed failure to file penalty of \$1,391,675.00, a self-
6 assessed failure to pay penalty of \$222,668.00, and self-assessed late payment interest of
7 \$214,318.00, all totaling \$7,395,362.00, were paid on November 21, 2005, with the 2004 gift tax
8 return.

9 5. On December 12, 2005, the Plaintiff filed a Form 843, Claim for Refund and
10 Request for Abatement, with the Internal Revenue Service Center at Cincinnati, Ohio, for a refund
11 of the failure to file and failure to pay penalties and interest paid by the Plaintiff on November 21,
12 2005. A copy of the claim is attached hereto as Exhibit A.

13 6. On January 30, 2006, the Defendant assessed against the Plaintiff a late filing
14 penalty of \$1,252,507.00, a failure to pay penalty \$278,335.00, and interest of \$356,866.00, for a
15 total assessment of \$1,887,708.00.

16 7. On March 13, 2006, the Internal Revenue Service decreased the failure to pay
17 penalty of \$278,335.00 assessed against the Plaintiff by \$55,667.01, leaving a total failure to pay
18 penalty on the Plaintiff's gift tax account of \$222,667.99, which was fully satisfied with the
19 November 21, 2005, payment by the Plaintiff, and also reduced assessed interest by \$91,915.31,
20 for a total net adjustment credit of \$147,582.32. After applying a portion of this overpayment to a
21 balance due on the Plaintiff's gift tax account for taxable year 2004 totaling \$59,048.42, on March
22 14, 2006, the Defendant issued a refund check to the Plaintiff in the net amount of \$88,533.90. A
23 copy of the correspondence from the Internal Revenue Service dated March 13, 2006, reflecting
24 the above-referenced adjustments, and the corresponding refund check dated March 14, 2006, are
25 attached collectively hereto as Exhibit B.

26 8. On July 10, 2006, the Internal Revenue Service decreased the failure to file penalty
27 of \$1,252,508.00 assessed against the Plaintiff by \$751,504.63, leaving a total failure to file

28 ///

1 penalty on the Plaintiff's gift tax account of \$501,003.37, which was fully satisfied with the
2 November 21, 2005, payment by the Plaintiff and overpaid by an additional \$139,168.00, and also
3 reduced assessed interest by \$62,740.81, for a total net adjustment credit of \$814,245.44. On July
4 11, 2006, the Defendant issued a refund check to the Plaintiff in the amount of \$814,245.44. A
5 copy of the correspondence from the Internal Revenue Service dated July 10, 2006, reflecting the
6 above-referenced adjustments, and the corresponding refund check dated July 11, 2006, are
7 attached collectively hereto as Exhibit C.

8 9. On July 14, 2006, the Defendant denied the Plaintiff's claim for refund of the
9 remainder of the assessed and fully paid failure to file and failure to pay penalties and assessed
10 and fully paid interest thereon. A copy of the denial is attached hereto as Exhibit D.

11 10. The Plaintiff's failure to timely file her 2004 gift tax return was due to reasonable
12 cause and not due to willful neglect.

13 11. The Defendant erroneously assessed and collected the failure to file and failure to
14 pay penalties and interest thereon. After the adjustments and corresponding refunds referenced in
15 paragraphs 7 and 8, above, the total remaining amount erroneously assessed and collected by the
16 Defendant for the failure to file and failure to pay penalties with respect to the Plaintiff's 2004 gift
17 tax return is \$862,839.00, and the total remaining amount of interest on the penalties erroneously
18 assessed and collected by the Defendant is \$214,318.00.

19 12. The Plaintiff has overpaid gift taxes due for the year ending December 31, 2004 by
20 \$862,839.00 comprised of the erroneously assessed and collected failure to file and failure to pay
21 penalties, and has overpaid interest thereon by \$214,318.00.

22 13. The Plaintiff is entitled to a refund of the failure to file and failure to pay penalties
23 assessed against and collected from her totaling \$862,839.00, and to a refund of interest assessed
24 against and collected from her totaling \$214,318.00, plus accrued and accruing interest on the
25 payments made.

26 WHEREFORE, the Plaintiff demands judgment in the amount of \$1,077,157.00, plus
27 accrued and accruing interest and costs allowed by law, and such other relief as the Court may

28 ///

1 deem just, including the award of reasonable litigation costs incurred in this proceeding under 26
2 U.S.C. § 7430.

3
4 Respectfully submitted,

5 DATED: June 20, 2008

SIDEMAN & BANCROFT LLP

6
7 By: 

8 Emily J. Kingston

9 Jay R. Weill

Attorneys for DIANA DOLLAR KNOWLES

10
11 JURY DEMAND

12 The Plaintiff hereby demands a jury on all issues triable by a jury.

13
14 Respectfully submitted,

15
16 DATED: June 20, 2008

SIDEMAN & BANCROFT LLP

17
18 By: 

19 Emily J. Kingston

20 Jay R. Weill

21 Attorneys for DIANA DOLLAR KNOWLES

LAW OFFICES
SIDEMAN & BANCROFT LLP
ONE EMBARCADERO CENTER, 8TH FLOOR
SAN FRANCISCO, CALIFORNIA 94111

Form **843****Claim ... Refund and Request for Abatement**(Rev. November 2005)
Department of the Treasury
Internal Revenue Service

OMB No. 1545-0024

▶ See separate instructions.

Use Form 843 only if your claim involves (a) one of the taxes shown on line 3a or (b) a refund or abatement of interest, penalties, or additions to tax on line 4a.

Do not use Form 843 if your claim is for--

- An overpayment of income taxes;
- A refund for nontaxable use (or sales) of fuel; or
- An overpayment of excise taxes reported on Form(s) 11-C, 720, 730, or 2290.

Type or print	Name of claimant DIANA DOLLAR KNOWLES	Your SSN or ITIN
	Address (number, street, and room or suite no.)	Spouse's SSN or ITIN
	City or town, state, and ZIP code SAN FRANCISCO, CA	Employer identification number (EIN)
	Name and address shown on return if different from above	Daytime telephone number
1	Period. Prepare a separate Form 843 for each tax period From JANUARY 1, 2004 to DECEMBER 31, 2004	2 Amount to be refunded or abated \$ 1,614,343.00

3 a	Type of tax, penalty, or addition to tax <input type="checkbox"/> Employment <input type="checkbox"/> Estate <input type="checkbox"/> Gift <input type="checkbox"/> Excise (see instructions) <input checked="" type="checkbox"/> Penalty - IRC section ▶ 6651(a)(1) and (2)
b	Type of return filed (see instructions): <input type="checkbox"/> 706 <input checked="" type="checkbox"/> 709 <input type="checkbox"/> 940 <input type="checkbox"/> 941 <input type="checkbox"/> 943 <input type="checkbox"/> 945 <input type="checkbox"/> 990-PF <input type="checkbox"/> 4720 <input type="checkbox"/> Other (specify)
4 a	Request for abatement or refund of: <input type="checkbox"/> Interest as a result of IRS errors or delays. <input type="checkbox"/> A penalty or addition to tax as a result of erroneous advice from the IRS.
b	Dates of payment ▶

5 Explanations and additional claims. Explain why you believe this claim should be allowed, and show computation of your tax refund or abatement of interest, penalty, or addition to tax. If you need more space, attach additional sheets.

TAXPAYER SSN REQUESTS REFUND OF PENALTIES CALCULATED UNDER IRC. SEC. 6651(a)(1) OF \$1,391,675. AND 6651(a)(2) OF \$222,668 ON COMBINED GIFT TAX AND GENERATION-SKIPPING TRANSFER TAX OF \$5,566,701 FORM 709, TAX YEAR 2004, PAID AND FILED NOVEMBER 21, 2005.

SEE TWO PAGE ATTACHMENT FOR ADDITIONAL DETAILS REQUESTING REFUND.

Signature. If you are filing Form 843 to request a refund or abatement relating to a joint return, both you and your spouse must sign the claim. Claims filed by corporations must be signed by a corporate officer authorized to sign, and the signature must be accompanied by the officer's title.

Under penalties of perjury, I declare that I have examined this claim, including accompanying schedules and statements, and, to the best of my knowledge and belief, it is true, correct, and complete.

Diana Dollar Knowles
Signature (Title, if applicable. Claims by corporations must be signed by an officer.)

12/12/05
Date

Signature _____ Date _____

DIANA DOLLAR KNOWLES

Social Security No.

2004 Gift Tax Return (Form 709)

Claim for Refund of Penalty Imposed For Failure to File Return (IRC 6651(a)(1))

Taxpayer claims a full refund of the failure to file penalty in the amount of \$1,391,675 paid in connection with her 2004 gift tax return filed on November 21, 2005. A copy of said return is attached hereto and hereby referred to and made a part hereof. The failure to file said return in a timely manner was due to reasonable cause and was not due to willful neglect as shown by the following facts:

1) Taxpayer is an elderly woman, who has been in extremely poor health for more than a year. She is under constant medical care and has 24 hour a day medical assistance in her home.

2) Taxpayer did not personally review her 2004 gift records in order to provide information to her tax preparer. Due to taxpayer's declining health, the task of assembling the information was delegated to taxpayer's secretarial assistant. The list of 2004 gifts assembled by taxpayer's secretarial assistant did not include the gift of \$5,200,000 made by wire transfer to taxpayer's granddaughter Kimberley Hersov nor did it include the gift of \$21,998 made to taxpayer's granddaughter Wendy Cary because the secretarial assistant believed that the gift tax had already been paid on those gifts. Because taxpayer's tax preparer did not receive information concerning these gifts, he concluded that all gifts made by taxpayer in 2004 were within the \$11,000 per donee annual exclusion and he did not prepare a gift tax return for taxpayer's signature.

3) The failure to file the 2004 gift tax return was discovered on November 17, 2005 by taxpayer's legal advisor, who immediately notified both taxpayer's tax preparer and her financial advisor. The gift tax return for 2004 was prepared immediately and the return was filed on November 21, 2005. The full amount of the gift tax, including penalties and interest, was paid at that time.

4) Taxpayer has a history of filing gift tax returns reporting taxable gifts and promptly paying the gift tax due in connection therewith. As shown on the 2004 gift tax return attached hereto, gift tax returns were filed by taxpayer for the years 1986, 1992, 1993, 1995, 1996, 1999, 2000, 2001, 2002 and 2003. Taxpayer's past history of timely filed gift tax returns and timely payment of gift taxes supports her assertion that her failure to file was due to reasonable cause and was not willful neglect. It is submitted that the above facts constitute good and sufficient cause for the refund of the failure to file penalty in the amount of \$1,391,675.

DIANA DOLLAR KNOWLES

Social Security No.

2004 Gift Tax Return (Form 709)

Claim for Refund of Penalty Imposed For Failure to Pay Tax (IRC 6651(a)(2))

Taxpayer claims a full refund of the failure to pay penalty in the amount of \$222,668 paid in connection with her 2004 gift tax return filed on November 21, 2005. A copy of said return is attached hereto and hereby referred to and made a part hereof. The failure to pay the gift tax in a timely manner was due to reasonable cause and was not due to willful neglect as shown by the facts set forth above. It is submitted that the above facts constitute good and sufficient cause for the full refund of the failure to pay penalty in the amount of \$222,668.

EXHIBIT B

05/04/2006 14:52 4157523575

KNOWLES

PAGE 03

30 Late Payment Penalty Removed \$55,667.01

We removed the late payment penalty we previously charged you.

For tax forms, instructions and information visit www.irs.gov. (Access to this site will not provide you with your specific taxpayer account information.)

05/04/2006 14:52 4157523575

KNOWLES

PAGE 04

United States Treasury ¹⁵⁻⁶¹000 A 409,509,539

03 14 06 87 AUSTIN, TEXAS 2307 29805373
2307 29805373 20091700 151 1KNOW CNCNATIF-709 REF
Pay to the order of DIANA D KNOWLES
SAN FRANCISCO CA

12/04
73 ***88533*90

1,664.92 INTEREST 99 DAYS

VOID AFTER ONE YEAR

023367 29805373

PERSONAL RETURNING OFFICE

001

Patricia A. [Signature]

* 23078 *

0000005180 2980537340 050306

07/13/2006 15:23 4157523575
 NO 51 200412 9427
 200626 000190 94118

KNOWLES

PAGE 82
 17509-337-08200-5 B0089E24 210
 SB V



Department of the Treasury
 Internal Revenue Service
 CINCINNATI, OH 45999-0038

IRS USE ONLY

For assistance, call:
 1-866-699-4083

Notice Number: CP210
 Date: July 10, 2006

Taxpayer Identification Number:

005330.256968.0020.001 1 MB 0.326 702
 |||||

Tax Form: 709
 Tax Period: December 31, 2004



DIANA D KNOWLES
 SAN FRANCISCO CA

Amount of Refund
\$814,245.44

105330

Statement of Adjustment to Your Account

Balance Due on Account Before Adjustment	\$0.00
Adjustment Computation	
Penalty Decrease - Filing Return Late	\$751,504.63
Interest Allowed	\$33,358.61
Reduction of Interest Previously Charged	\$29,382.20
Net Adjustment Credit	\$814,245.44
Overpayment	\$814,245.44

Interest allowed must be reported as income on your next income tax return.

Status of Your Account - Refund

We'll refund your overpayment (plus interest when applicable), if you owe no other taxes or have no other debts the law requires us to collect.

Status of Your Account (Exam)

This notice isn't the result of an examination of your return. We notify a taxpayer when we select his/her return for examination.

For tax forms, instructions and information visit www.irs.gov. (Access to this site will not provide you with your specific taxpayer account information.)

EXHIBIT C

07/13/2006 15:23
Seq. No: B0089824

4157523575
CP: 210
TIN:

KNOWLES

PAGE 03

Form: 709

Tax Period: December 31, 2004



005330

 CUT HERE

Return this voucher with your payment or correspondence.

Your Telephone Number:

Best Time to Call:

() -

AM PM

☐ Correspondence enclosed:

- Write your Taxpayer Identification Number, tax period and tax form number on your inquiry or correspondence.

SB 200626 012425 17509-337-08200-5

210 Internal Revenue Service
CINCINNATI, OH 45999-0038

DIANA D KNOWLES

SAN FRANCISCO CA



550663023 NO 51 0 200412

United States Treasury ¹⁵⁻⁵¹ 000 A 448,025,325

07 11 06 23 AUSTIN, TEXAS 2307 63680803

2307 63680803 20091700 151 1KNOW CNCNATIF-709 REF

Pay to the order of DIANA D KNOWLES

SAN FRANCISCO CA

12/04
03

\$*814245*44

VOID AFTER ONE YEAR

33,358.61 INTEREST 218 DAYS

Robert C. Merga

230781 0000000518 63680803 050706



CINCINNATI OH 45999-0029

023717.257305.0116.003 2 AB 0.554 1182



DIANA D KNOWLES
SAN FRANCISCO CA

CUT OUT AND RETURN THE VOUCHER AT THE BOTTOM OF THIS PAGE IF YOU ARE MAKING A PAYMENT,
EVEN IF YOU ALSO HAVE AN INQUIRY.

The IRS address must appear in the window.

2477525291

BODCD-SB

Use for payments

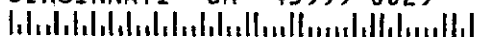
Letter Number: LTR0854C
Letter Date : 2006-07-14
Tax Period : 200412



* *

INTERNAL REVENUE SERVICE

CINCINNATI OH 45999-0029



DIANA D KNOWLES
SAN FRANCISCO CA



CINCINNATI OH 45999-0029

In reply refer to: 2477525291
 July 14, 2006 LTR 854C 0
 V 200412 51 000
 07820
 BODC: SB

DIANA D KNOWLES
 SAN FRANCISCO CA

Taxpayer Identification Number:
 Tax Period(s): Dec. 31, 2004
 Form: 709

Kind of Penalty: Failure to File
 Failure to Pay

Dear Taxpayer:

Thank you for the inquiry Dated Dec. 14, 2005.

We are sorry, but the information submitted does not establish reasonable cause or show due diligence. Therefore, we must deny your request for penalty adjustment.

The duties of filing tax returns and paying taxes may be delegated. However, it is the responsibility of the taxpayer to ensure that all returns are filed and all taxes are paid timely and correctly.

The brief & undetailed statement regarding Mrs. Knowles age and poor health is not reasonable cause. That Mrs. Knowles secretarial assistant was to attend to the filing & paying of the gift tax return and such reliance on this third party regarding tax matters is not reasonable cause.

If you want to appeal or give us more information, the following will be helpful.

APPEALS PROCEDURES

EXHIBIT D

If you have additional information and want your case to receive further consideration by an Appeals Officer, please provide a brief written statement of the disputed issues to the Service Center Appeals Coordinator. It should include:

1. Your name and address;
2. Your social security number or employer identification number;
3. A statement that you want to appeal the findings;
4. A statement of facts supporting your position on the issues you

2477525291
July 14, 2006 LTR 854C 0
V 200412 51 000
07821

DIANA D KNOWLES

SAN FRANCISCO CA

- are appealing,
5. If possible, a statement outlining the law or other authority on which you rely.
 6. A copy of this letter.

The statement of facts, under 4 above, should be detailed and complete, including specific dates, names, amounts, and locations. It must be declared true under penalties of perjury. You may do this by adding to your statement the following signed declaration:

"Under penalties of perjury, I declare that the facts presented in my written protest, which are set out in the accompanying statement of facts, schedules, and other statements are, to the best of my knowledge and belief, true, correct, and complete."

If your authorized representative sends us the protest for you, he or she may substitute a declaration stating that he or she prepared the statement and accompanying documents and whether he or she knows that the statement and accompanying documents are true and correct.

Please send your response to:

Internal Revenue Service
Service Center Penalty Appeals Coordinator
Attn: Ms. R. Zulager Stop 5111G
201 W. Rivercenter Blvd.
Covington KY 41011

The Service Center Appeals Coordinator will review your appeal information to determine whether the penalty should be removed or reduced. If your appeal can't be resolved immediately with the additional information, the coordinator will send your written statement to the Appeals Office serving your district.

REPRESENTATION

An attorney, certified public accountant, or person enrolled to practice before the Internal Revenue Service may represent you. To have someone represent you, attach a Form 2848, Power of Attorney and Declaration of Representative, (or similar written authorization) to your written statement.

Forms, instructions, and Treasury Department Circular 230, Regulations Governing the Practice of Attorneys, Certified Public Accountants, and Enrolled Agents Before the Internal Revenue Service, are available from any Internal Revenue Service

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July 14, 2006 LTR 854C 0
V 200412 51 000
07822

DIANA D KNOWLES
SAN FRANCISCO CA

office.

OTHER INFORMATION

If taxes are overdue on your account, you will continue to receive bills even if you appeal the penalty. If you decide to appeal, you may pay the penalty to avoid further interest charges on the penalty amount. If you appeal the penalty and the Appeals Officer determines that you are not required to pay it, we will adjust your account and send you a refund.

If you don't appeal, you may file a claim for refund after you pay the penalty. If you want to take your case to court immediately, you should request in writing that your claim for refund be immediately rejected. Then you will be issued a notice of disallowance. You have two years from the date of the notice of disallowance to bring suit in the United States District Court having jurisdiction or in the United States Claims Court.

If you have any questions, please call us toll free at 1-800-829-0115.

If you prefer, you may write to us at the address shown at the top of the first page of this letter.

Whenever you write, please include this letter and, in the spaces below, give us your telephone number with the hours we can reach you. Keep a copy of this letter for your records.

Telephone Number () _____ Hours _____

2477525291
July 14, 2006 LTR 854C 0
V 200412 51 000
07823

DIANA D KNOWLES
SAN FRANCISCO CA

Sincerely yours,



Betsy J. Rollins
Estate & Gift Tax Operations Mgr.

Enclosures:
Copy of this letter
Envelope